

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

**IN THE MATTER OF:**

**TWIN-STATE, INC.,  
dba Liqui-Grow**

**Washington County, Iowa**

**ADMINISTRATIVE CONSENT  
ORDER**

**NO. 2012-WW-19**

**TO: W. Scott Tinsman Jr.  
Registered Agent  
Twin-State, Inc.  
3541 E. Kimberly Rd.  
Davenport, IA 52807**

**I. SUMMARY**

This administrative consent order (Order) is entered into between Twin-State, Inc. and the Iowa Department of Natural Resources (DNR) for the purpose of resolving violations related to the illegal discharge of chemicals from the Liqui-Grow facility in Washington, Iowa

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Aaron Pickens, Environmental Specialist  
IDNR Field Office #6  
1023 W. Madison  
Washington, IA 52353  
Ph: 319-653-2135

**Relating to this Order:**

Jon C. Tack  
Legal Services Bureau  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Ph. 515-281-8889

**II. JURISDICTION**

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; Iowa Code section 455B.386 which authorizes the assessment of a civil penalty of not more than one thousand dollars for the failure to timely report a hazardous condition; and Iowa Code section 455B.109 and chapter 567 Iowa Administrative Code (IAC) 10 which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. Twin-State, Inc. owns and operates an agricultural chemical and fertilizer facility at 503 North 12<sup>th</sup> Street, Washington, Iowa using the name "Liqui-Grow of Washington". Twin-State, Inc. stores, handles, and transports various fluid-based crop inputs such as fertilizers, pesticides, and herbicides at or from this facility. The facility consists of an office building with attached warehouse, a separate warehouse, a bulk tank storage facility with secondary containment, and a mixing/wash area with containment. Twin-State, Inc. operates similar Liqui-Grow facilities at other locations in Iowa.

2. On the evening of April 17, 2012, the City of Washington Police Department reported to the DNR that a milky color had been observed and a chemical odor detected in a small creek on the southeast side of the town of Washington. The creek is in the area of South 14<sup>th</sup> Street and East Adams Street. Environmental Specialist Aaron Pickens met with Washington Police Officer Ron See at the location of the report to investigate. The milky color and chemical odor were observed by Mr. Pickens. The chemical discharge was followed upstream and determined to have come from the Liqui-Grow facility at 503 N. 12<sup>th</sup> Street in Washington. Water samples were taken from the creek.

3. At approximately 8:00 p.m. on April 17<sup>th</sup>, Aaron Pickens met with Dan Luers, manager of the Liqui-Grow facility. Mr. Luers indicated that chemical totes had been washed at the facility that day in preparation for recycling or disposal and that an employee had mistakenly pumped some of the rinsate onto the ground from an underground containment area. Mr. Pickens observed 18-20 totes and various smaller containers that had been rinsed and remained in or near the containment area. The rinsate in the containment area was observed to be the same color and have the same odor as the chemical observed in the creek. Mr. Luers said that on that day (April 17, 2012) when the underground collection pit had become full during the cleaning of the totes an employee thought the above ground tank was also full and deliberately pumped some of the contents of the collection pit out on the ground. Mr. Pickens observed the area where the wastewater ran across the gravel lot into a drainage ditch on the north side of the Liqui-Grow of Washington property. The entire area had a strong chemical odor. A white milky liquid was also observed in the drainage ditch. The totes that had been cleaned on April 17, 2012 were identified to have contained Atrazine 4L Herbicide (Atrazine), Instinct Nitrogen Stabilizer (Nitrpyrin), and Durango DMA Herbicide (Glyphosate). MSDS sheets were obtained from the facility. Photos were also taken for documentation. Water samples were collected from the containment pit as well as the drainage ditch for analysis at the State Hygienic Lab. At approximately 8:15 city personnel arrived at the Liqui-Grow facility at my request. The storm sewer manhole cover near the east end of the drainage ditch was opened and Mr. Pickens observed a small amount of liquid in the bottom of the storm sewer that appeared milky white in color and smelled of chemicals.

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4. The following chemical analysis was received for the samples taken on April 17, 2012:

<u>Location</u>	<u>Ammonia Nitrogen as N</u>	<u>Atrazine</u>	<u>Acetochlor</u>	<u>Nitrapyrin</u>	<u>Glyphosate</u>	<u>Ethylene Glycol</u>
Liqui-Grow tank wash pit	58 ppm	140,000 ppb	58,000 ppb	82,000 ppb	22 ppm	3.9 ppm
Liqui-Grow drainage ditch	3,600 ppm	17,000 ppb	17,000 ppb	14,000 ppb	120 ppm	<1.5 ppm
Creek access at S. 14th	52 ppm	5600 ppb	1500 ppb	1200 ppb	2.1 ppm	2.0 ppm

5. The DNR returned to the Liqui-Grow facility on April 18<sup>th</sup>. Aaron Pickens was accompanied by Field Office #6 Supervisor Dennis Ostwinkle. Mr. Ostwinkle recalled that a storm sewer intake on the east end of the drainage ditch had been located at the Liqui-Grow facility during the investigation of a similar incident in 2007. The intake was not observed the previous evening. The intake, which had been covered with rock and debris, was located by the DNR. The location of the intake explained how the spilled chemicals entered the storm sewer. Mr. Pickens and Mr. Ostwinkle visited the creek access again on South 14th Street as well as on Airport Road. Ammonia was tested using a Hach field test kit at both locations. Results were as follows: South 14th Street Access - 1.5 mg/L; Airport Road Access - above the 3.0 mg/L maximum detection level of Hach Kit. pH was tested using a field test strip and was 6.5.

At approximately 10:00 a.m., Mr. Pickens met with Liqui-Grow Manager Dan Luers. Mr. Pickens instructed Mr. Luers in regard to remediation requirements which included immediately blocking the intake to the storm sewer, flushing the storm sewer with clean water and capturing any flush water for proper disposal. Mr. Luers was also informed that his company would need to excavate the rock and soils in the drainage ditch and gravel lot. With the assistance of the City of Washington, the storm sewer was flushed.

6. From the time of the incident until remediation was completed, Twin-State, Inc. was instructed to collect and land apply any rainwater collecting in the drainage ditch at the Liqui-Grow facility in Washington due to the high pollutant levels determined to exist in the storm water coming into contact with the site. This was done during the majority of rainfall event, but during higher rainfall events, the contaminated storm water entered the storm sewer.

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7. On April 27, 2012, Twin-State, Inc. submitted the required written report of the hazardous condition.

8. On May 3, 2012, Twin-State, Inc. sealed the storm water intake and began the excavation of contaminated soils.

9. On May 4, 2012, a Notice of Violation was issued to Twin-State, Inc. due to the illegal discharge of a pollutant to a water of the state and the failure to report a hazardous condition in a timely manner.

10. On June 6, 2012, Twin-State, Inc. completed the removal of contaminated soils at the Liqui-Grow facility in Washington. The contaminated area was then left exposed for several weeks to promote volatilization of contaminants. On July 3, 2012 fill material and rock was hauled in which completed the remediation process.

#### **IV. CONCLUSIONS OF LAW**

The DNR and Twin-State, Inc. agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. The above-stated facts establish a violation of this statute.

2. Pursuant to 567 IAC 61.3(2), all waters of the state of Iowa shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life. The above-stated facts establish a violation of this subrule.

3. Pursuant to Iowa Code section 455B.386, a person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the DNR and the local police department or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. A person violating this section is subject to a civil penalty of not more than one thousand dollars. The above-stated facts establish a violation of this statute.

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**V. ORDER**

The DNR and Twin-State, Inc. hereby agree, and Twin-State, Inc. is hereby ordered to comply with the following:

1. By September 1, 2012, Twin-State, Inc. shall submit to the Department a comprehensive spill prevention and response plan for the Liqui-Grow facilities in Iowa.
2. By October 1, 2012, Twin-State, Inc. shall submit to DNR Field Office #6 a disposal plan for liquids captured in containment structures or storage tanks at the Liqui-Grow facility in Washington, Iowa. The plan must include options for emergency disposal or storage in the event that land application options are unavailable.
3. By December 1, 2012, Twin-State, Inc. shall submit to the Department a disposal plan for liquids captured in containment structures or storage tanks at all other Liqui-Grow facilities in Iowa. The plan must include options for emergency disposal or storage in the event that land application options are unavailable.
4. Within 30 days of the execution of this Order, Twin-State, Inc. shall pay an administrative penalty in the amount of \$10,000.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. Iowa Code section 455B.386 authorizes the assessment of a civil penalty of up to \$1,000 for failure to report a hazardous condition within the time frames set forth therein.
2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at Chapter 567 IAC 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with penalties.
  - a. Economic Benefit. Twin-State, Inc. received an economic benefit from discharging from the containment structure on April 17, 2012, rather than properly disposing of the wastewater. Therefore, a penalty of \$1,000 is assessed for this factor.
  - b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties

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authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Although a fish kill was not documented in this case, chemical and ammonia levels were high enough to threaten aquatic life. The prohibited discharge of chemicals resulted in a confirmed and documented violation of general water quality criteria. Twin State, Inc. was involved in a similar incident in 2007 at the Washington facility that resulted in a small fish kill. Total investigative costs of \$4,014 were accrued by the DNR in responding to this incident. In light of these factors, the multiple days of violation; and in order to resolve this matter administratively, a penalty of \$5,000 is assessed for this factor.

c. Culpability. As a company involved in the storage, handling, and transportation of agricultural chemicals, Twin State Inc. has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to the DNR's rules and may cause harm to human health and the environment. In this case, chemicals were deliberately discharged and reached a water of the state. In light of these actions and a similar discharge in 2007, a penalty of \$3,000 is assessed for this factor.

d. Failure to report a hazardous condition. Twin-State, Inc. had a duty to report the hazardous condition no later than the point at which it was known that the employee had pumped out the containment tank onto the ground. A penalty in the amount of \$1,000 is assessed for this violation.


## **VII. WAIVER OF APPEAL RIGHTS**

Iowa Code section 455B.175(1) and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Twin-State, Inc. By signature to this Order, all rights to appeal this Order are waived.

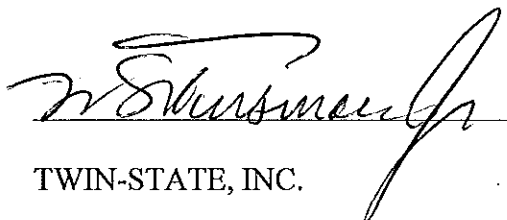
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VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 16<sup>th</sup> day of  
August, 2012

  
TWIN-STATE, INC.

Dated this 31 day of  
July, 2012

Field Office #6; Jon Tack; I.C.1; IV.A